IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 117 of 2007
Date of decision 16.4.2007

The Commissioner of Income Tax, Panchkula.
.. Appellant

Versus

Haryana Tourism Corporation Ltd., Chandigarh .. Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE RAJESH BINDAL

PRESENT: Mr. Yogesh Putney, Advocate for the Appellant.

M.M.Kumar, J.

This appeal filed under Section 260 A of the Income Tax Act,1961 (for brevity 'the Act') is directed against the order dated 13.9.2006 passed by the Income Tax Appellate Tribunal Bench “B”, Chandigarh in ITA No. 740/Chandi/2003 for the assessment year 2001-02 raising the following substantive question of law:

> “ Whether in the facts and circumstances of the case the ld. ITAT was right in holding that since the AO did not have any jurisdiction to carry out any adjustment to the income tax return while framing intimation u/s 143(1), ignoring the clear provisions of Section 154(1)(b) of the IT Act, 1961?”

The Tribunal has held that in terms of Finance Act 1991 w.e.f. 1.6.1999, which was applicable to the return of income filed by the assessee for the assessment year 2001-02, the Assessing Officer did not have any jurisdiction to carry out any adjustment in the return while processing the return under Section 143(1) of the Act. In other words, such intimation could also not be subjected to rectification under Section 154 of the Act

subsequently so as to include within its scope the issue which could not be gone into by the Assessing Officer while framing the original intimation under Section 143(1) of the Act. In the instant case, the Assessing Officer while passing the order dated 18.12.2002 under Section 154 of the Act has rectified the claim of depreciation as accepted while processing the return under Section 143(1) of the Act. The afore-mentioned action of the Assessing Officer has been held to be outside the scope of the provisions of Section 154 of the Act. Therefore, the order has been held to be without jurisdiction.

After hearing learned counsel, we are of the considered view that no legal infirmity in the impugned order passed by the Tribunal could be found because the Assessing Officer while exercising jurisdiction under Section 154 of the Act has not made rectification on an issue which was disputed by the assessee and was a debatable issue. Once he has allowed depreciation at a particular rate, he cannot lateron record a conclusion while exercising jurisdiction under Section 154 of the Act that excessive depreciation was allowed when the facts were disputed by the assessee and reframe the assessment on that basis. There is no merit in this appeal and the same is dismissed.

(M.M.Kumar)
Judge

(Rajesh Bindal)
Judge

16.4.2007
okg